

**SENATE BILL No. 391**

By Committee on Federal and State Affairs

2-10

1 AN ACT concerning labor and employment; relating to occupational  
2 licensing and regulation; enacting the right to earn a living act.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 4, and amendments thereto, shall be  
6 known and may be cited as the right to earn a living act.

7 (b) The legislature finds that:

8 (1) The right of individuals to pursue a chosen profession, free from  
9 arbitrary or excessive government interference, is a fundamental civil  
10 right.

11 (2) The freedom to earn an honest living traditionally has provided  
12 the surest means for economic mobility.

13 (3) In recent years, many regulations of entry into professions have  
14 exceeded legitimate public purposes and have had the effect of arbitrarily  
15 limiting entry and reducing competition.

16 (4) The burden of excessive regulation is borne most heavily by  
17 individuals outside the economic mainstream, for whom opportunities for  
18 economic advancement are curtailed.

19 (5) It is in the public interest to:

20 (A) Ensure the right of all individuals to pursue legitimate  
21 entrepreneurial and professional opportunities to the limits of their talent  
22 and ambition;

23 (B) provide the means for the vindication of this right; and

24 (C) ensure that regulations of entry into professions are demonstrably  
25 necessary and carefully tailored to legitimate health, safety and welfare  
26 objectives.

27 (c) For the purposes of this act:

28 (1) "Agency" means any department, bureau, division, board,  
29 authority, agency, commission or institution of this state, any political  
30 subdivision of the state and any city, county or unified government that is  
31 authorized by law to administer, adopt or enforce any occupational  
32 regulation or occupational license. "Agency" does not include the judicial  
33 and legislative branches of government.

34 (2) "Occupational license" means a nontransferable and exclusive  
35 authorization in law in which the legislature establishes the personal  
36 qualifications necessary to engage in any occupation or profession.

1 (3) "Occupational regulation" means any regulation, rule, policy, fee,  
2 condition, test, permit, administrative practice or other provision in which  
3 an agency establishes the personal qualifications necessary to engage in  
4 any occupation or profession. An "occupational regulation" does not  
5 include an "occupational license."

6 (4) "Less restrictive regulation" means, from least to most restrictive:

- 7 (A) Market competition;  
8 (B) third-party or consumer-created ratings and reviews;  
9 (C) private certification;  
10 (D) voluntary bonding or insurance;  
11 (E) specific private civil cause of action to remedy consumer harm;  
12 (F) deceptive trade practice act;  
13 (G) mandatory disclosure of attributes of the specific good or service;  
14 (H) regulation of the process of providing the specific good or  
15 service;  
16 (I) inspection;  
17 (J) bonding;  
18 (K) insurance;  
19 (L) government registration;  
20 (M) government certification;  
21 (N) specialty occupational license for medical reimbursement; and  
22 (O) occupational license.

23 (5) "Personal qualifications" means criteria related to an individual's  
24 personal background and characteristics including completion of an  
25 approved educational program, satisfactory performance on an  
26 examination, work experience, other evidence of attainment of requisite  
27 skills or knowledge, moral character, criminal history and completion of  
28 continuing education.

29 (6) "Specialty occupational license for medicaid reimbursement"  
30 means a non-transferable authorization in law for an individual to qualify  
31 for payment or reimbursement from a governmental agency for the non-  
32 exclusive provision of medical services based on meeting personal  
33 qualifications established by the legislature. A private health insurance  
34 company or other private company may recognize this credential for the  
35 purpose of reimbursing medical costs.

36 (7) "Welfare" means the protection of members of the public against  
37 fraud or harm and shall be narrowly construed. "Welfare" does not include  
38 the protection of existing businesses or agencies, whether publicly or  
39 privately owned, against competition.

40 (8) "Subsidy" means taxes, grants, user fees or any other funds  
41 received by or on behalf of an agency.

42 Sec. 2. (a) All occupational regulations shall be limited to those  
43 demonstrably necessary and carefully tailored to fulfill legitimate public

1 health, safety or welfare objectives as provided by this act.

2 (b) Within one year following July 1, 2020, every agency shall  
3 complete a comprehensive review of all occupational regulations and  
4 occupational licenses within their jurisdictions, and for each it shall:

5 (1) Articulate with specificity the public health, safety or welfare  
6 objectives served by the regulation;

7 (2) articulate the reasons why the regulation is necessary to serve the  
8 specified objectives;

9 (3) analyze, where information is readily available, the effects of  
10 regulation on opportunities for workers, consumer choices and costs,  
11 general unemployment, market competition, governmental costs and other  
12 effects; and

13 (4) compare the regulation to whether and how other states regulate  
14 the business or profession.

15 (c) To the extent the agency finds any regulation that the agency  
16 determines does not satisfy the standard set forth in subsection (a), it shall:

17 (1) Repeal the occupational regulation or modify the occupational  
18 regulation to conform with the standard set forth by subsection (a) if such  
19 action is within the agency's authority; or

20 (2) recommend to the legislature actions necessary to repeal or  
21 modify the occupational license or occupational regulation to conform to  
22 the standard of subsection (a) if such action as it relates to an occupational  
23 regulation is not within the agency's authority.

24 (d) Within 15 months following July 1, 2020, each agency shall  
25 report to the legislature on all actions taken to conform with this section.  
26 The report shall be provided to the senate committee on commerce and the  
27 house committee on commerce, labor and economic development on or  
28 before February 1, 2021, and each February 1 thereafter.

29 Sec. 3. (a) Any person may petition any agency to repeal or modify  
30 any occupational regulation within its jurisdiction.

31 (b) Within 90 days of the filing of such petition, the agency shall:

32 (1) Repeal the occupational regulation;

33 (2) modify the regulation to achieve the standard set forth in section  
34 2, and amendments thereto; or

35 (3) state in writing provided to the petitioner the basis of the agency's  
36 conclusion that the regulation conforms with the standard set forth in  
37 section 2, and amendments thereto.

38 (c) Filing a petition shall not be a requirement or prohibition for any  
39 person to file an action in a court of general jurisdiction to challenge an  
40 occupational regulation.

41 (d) The plaintiff shall prevail if the court finds by a preponderance of  
42 the evidence that the challenged occupational regulation, on its face or in  
43 its effect, burdens the entry into a profession or occupation; and

1 (1) that the agency has failed to prove by a preponderance of  
2 evidence that the challenged occupational regulation is not demonstrably  
3 necessary and carefully tailored to fulfill legitimate public health, safety or  
4 welfare objectives; or

5 (2) that the legitimate public health, safety or welfare objectives can  
6 be effectively served by using a less restrictive regulation that is less  
7 burdensome to economic opportunity.

8 (e) Upon a finding for the plaintiff, the court shall enjoin further  
9 enforcement of the challenged occupational regulation and shall award  
10 reasonable attorney fees and costs to the plaintiff.

11 Sec. 4. If any provision or clause of this act or application thereof to  
12 any person or circumstance is held invalid, such invalidity shall not affect  
13 other provisions or applications of this act that can be given effect without  
14 the invalid provision or application, and to this end the provisions of this  
15 act are declared to be severable.

16 Sec. 5. This act shall take effect and be in force from and after its  
17 publication in the statute book.